

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

LAUSTEVEION DELANO JOHNSON,

Petitioner,

vs.

DWIGHT NEVEN, *et al.*,

Respondents.

2:08-cv-01363-JCM-RJJ

ORDER

This represented habeas matter under 28 U.S.C. § 2254 comes before the court on petitioner's motion (#48) "for a status check," which has been filed under seal.

While the court understands and appreciates counsel's underlying effort to move the case forward within the time parameters previously laid out by the court, the motion will be denied without prejudice.

First, petitioner has not properly presented the court with motions seeking the relief ultimately sought. In the motion, petitioner requests a "status check" to seek an order amending the prior protective order and to seek an extension of time to file an amended petition. There is no motion to amend the prior protective order before the court. There is no motion for an extension before the court. In the prayer in the motion, petitioner requests that the court set the matter for a status conference and "[g]rant such other relief as is just and equitable." Petitioner needs to file motions requesting the relief sought. If further collateral relief is sought with regard to the motions – such as, *e.g.*, a status

1 conference, expedited briefing and consideration, or oral argument – counsel should file a
2 separate motion seeking such collateral relief.

3 Second, a request for a status *check* is a request to the court to check on the status
4 of a previously-pending matter under submission. A request for a status *conference*
5 instead seeks to have a conference scheduled with the court and counsel. Pursuant to
6 Local Rule LR 7-6(b), requests for a status check are to be made by letter rather than
7 motion, if a matter has been submitted without action for sixty days. When more prompt
8 action is required, it is the court's preference that requests in this regard be made by a
9 motion for expedited consideration rather than by telephone call.

10 Third, the court generally would prefer in habeas matters to proceed on the briefing
11 of written motions, rather than to manage the case via status conferences. With electronic
12 docketing, subject to the discussion below, every filing reaches the court and its staff
13 promptly upon filing. A reviewing court can determine from the face of the docket sheet
14 what was requested on what showing, and what was decided on what basis, far more
15 quickly and with more certainty when it reviews orders on written motions. Conversely,
16 action that is memorialized in a status conference order that was taken without regard to a
17 specific pending motion, based upon discussion that may not necessarily be fully
18 memorialized in the order, is not always subject to such quick and clear determination
19 when viewed much later in a case. Accordingly, the court generally prefers to issue
20 written orders on specific written motions rather than hold status conferences on multiple
21 topics that are not the subject of actual pending motions that have been fully briefed by
22 both sides.

23 Finally, counsel may wish to note that the current electronic docketing system limits
24 the distribution within the court of notices of filing of sealed filings. The staff attorneys, in
25 particular, do not receive a notice of such a filing.¹ Counsel may consider the advisability

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27 ¹ Ultimately, this aspect of CM/ECF will be changed, but it cannot be changed at present. Determining
28 the existence of a sealed filing without a notice of filing is analogous to the proverbial search for a needle in a
(continued...)

1 of filing an unsealed notice or letter advising of the sealed filing along with the sealed
2 filing.

3 The court will deny the present motion without prejudice and will extend petitioner's
4 deadline for filing an amended petition to allow petitioner sufficient time to instead present
5 his requests by specific written motion that then are fully briefed prior to action by the
6 court. While the court is endeavoring to resolve all aspects of this matter by March 31,
7 2012, it would appear from preliminary review of the present motion that such may well not
8 be possible if the court ultimately grants the relief sought following briefing and
9 consideration.

10 With further regard to potential modification of the protective order, petitioner
11 should address in any motion filed the relationship between the breadth of dissemination
12 of the documents in question and potential prison security issues. If the modification
13 sought ultimately would result in documents pertaining to other inmates being seen by Mr.
14 Hall and/or by other inmates in other cases, there may be internal prison security issues
15 attending such dissemination. The court understands in this regard that Mr. Wiideman
16 himself has passed away. The court's concern more is with regard to information
17 potentially being in the hands of one living inmate regarding another living inmate. This
18 concern currently is addressed in the protective order, see #27, at 7; and the court is
19 inclined to extend such measures to any use of the documents in other proceedings by
20 other inmates seeking to present similar issues.

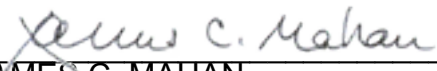
21 IT THEREFORE IS ORDERED that petitioner's motion (#48) styled as a motion for
22 status check is DENIED without prejudice.

23 IT FURTHER IS ORDERED that the time for petitioner to file an amended petition,
24 or seek other appropriate relief, is extended up to and including fourteen (14) days after
25 entry of this order. Petitioner may reference the sealed exhibits filed in support of the
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27
28 ¹(...continued)
haystack, but with the sealed "needle" often appearing just like another unsealed "straw" on the report.

1 present motion in a subsequent motion without the necessity of refiling the exhibits.

2 DATED: December 12, 2011.

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6 JAMES C. MAHAN
United States District Judge